

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

THE SOLAR CORPORATION

EMPLOYER

And

**UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA**

CASE 13-RC-21131

PETITIONER

And

**PLASTIC WORKERS UNION, LOCAL NO.
18, AFL-CIO**

INTERVENOR

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held December 22, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.¹

I. ISSUES

The United Electrical, Radio and Machine Workers of America (herein the “Petitioner”) seeks an election for a unit comprised of all production and maintenance employees employed by Solar Corporation (herein the “Employer”) at its facility in Libertyville, Illinois. The Employer and the Plastic Workers Union, Local No. 18, AFL-CIO (herein the “Intervenor”) stipulated at hearing that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining under the Act.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organizations involved claim to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The main issue in the instant case is the wording on the election ballots. The Employer asserts that the election ballots distributed to the unit employees during the instant election should list only two choices: the Petitioner and the Intervenor. The Employer argues that the choice "NEITHER" should not be included on the ballots. The Petitioner and the Intervenor insist that the choice of "NEITHER" must be included on the ballots, along with the names of both unions.

In addition, the Employer disputes the manner in which the election should be conducted, arguing that the Board must permit a releasing schedule during the election. The Petitioner and the Intervenor took no position on the record as to whether a releasing schedule was warranted or desired.

II. DECISION

For the reasons discussed in detail below, I find that the choice "NEITHER" must be listed on the ballots for the election in this matter. Moreover, the time, place, and manner of conducting an election is an administrative matter left to the discretion of the undersigned to determine after having directed an election. Therefore,

IT IS HEREBY ORDERED that an election in the bargaining unit described below be conducted under the direction of the undersigned at a time and place to be set forth in a subsequently issued notice of election:

All production and maintenance employees employed by the Employer at its facility currently located at 100 Solar Drive, Libertyville, Illinois; but excluding all other employees, outside truck drivers, quality control employees, technical employees, managerial employees, office clerical employees and guards, and professional employees and supervisors as defined in the Act.

The unit herein consists of approximately 250 employees. The Employer and the Intervenor are parties to a collective-bargaining agreement, effective March 3, 2001 to March 2, 2004.

A. Facts

The Employer is engaged in the production of plastic materials at its facility in Libertyville, Illinois. The Employer produces decorative piece parts for the automotive and home entertainment industries. Employees in the petitioned-for unit assemble, mold, paint and otherwise decorate plastic products. The Employer operates its facility continuously, 24 hours per day.

B. Discussion

1. Wording on the Ballots

Pursuant to Section 11306.1 of the National Labor Relations Board's Casehandling Manual on Representation Proceedings, ballots are in all cases to be furnished by the Board. Moreover, Section 11306.4 dictates that, where more than one labor organization appears on the ballot, the choice against representation by any of the participating organizations should be "neither" if there are two unions or "none" if there are more than two.

In addition, Section 7 of the Act affords all employees the choice whether **or not** to be represented by a labor organization and to choose their labor organization. In *Interlake Iron Corporation*, 4 NLRB 55, 60-61 (1937), the Board considered circumstances exactly parallel to those in the instant case. In *Interlake*, the petitioning and intervening unions filed a motion to strike the choice "NEITHER" from the election ballots, arguing that the unit employees should be forced to choose one union or the other.

The Board rejected this argument. In holding that the choice "NEITHER" must remain on the ballots, the *Interlake* Board stated that its policy in this regard was designed to make sure that the votes recorded for a particular representative express a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives. *Id.* at 61. The Board noted that the Act does not require an unwilling majority of employees to bargain through representatives; instead, it merely guarantees and protects the right of a majority if it chooses to exercise it. Therefore, if the opportunity of voting against the unions named on the ballot were denied, a majority might be forced against its will to accept representation by one or the other of the nominees. *Id.*

As in *Interlake*, the unit employees in the instant case must be permitted to express their free choice, which includes selecting **neither** of the unions on the ballot. To decide otherwise would strip employees of their guaranteed Section 7 right to join a labor organization or **to refrain** from such activities. 29 U.S.C. §157. Based on applicable Board law, the Board's Casehandling Manual, and the public policy considerations discussed herein, I disavow the Employer's argument to exclude the choice "NEITHER" on the ballots in this matter. Rather, I find that the choice "NEITHER" must be included, along with both labor organizations, on the ballots in question.

2. Releasing Schedule

The time, place, and manner of conducting an election is an administrative matter left to the discretion of the undersigned to determine after having directed an election. *Odebrecht Contractors of Florida, Inc.*, 326 NLRB 33 (1998); *North American Plastics Corporation*, 326 NLRB 835 (1998). The Board has held that a Regional Director has broad discretion in arranging the details of the election. *Harold F. Gross d/b/a Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31 (1951).

Accordingly, after the issuance of the instant Decision and Direction of Election, the undersigned will administratively determine the manner of conducting the election, taking into consideration the positions of the parties and the guidelines of the Board as set forth in *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Electrical, Radio and Machine Workers of America, the Plastic Workers Union, Local No. 18, AFL-CIO, or neither.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before January 15, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 22, 2004.

DATED at Chicago, Illinois this 8th day of January 2004.

Harvey A. Roth, Acting Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606